



**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

**FILED**  
12-10-14  
04:59 PM

Application of San Diego Gas & Electric Company  
(U 902 E) for Authority to Partially Fill the Local  
Capacity Requirement Need Identified in D.14-03-  
004 and Enter into a Purchase Power Tolling  
Agreement with Carlsbad Energy Center, LLC.

Application 14-07-009  
(Filed July 21, 2014)

**OPENING BRIEF OF  
SIERRA CLUB AND CALIFORNIA ENVIRONMENTAL JUSTICE ALLIANCE**

MATTHEW VESPA  
Sierra Club  
85 Second St., 2nd Floor  
San Francisco, CA 94105  
Telephone: (415) 977-5753  
matt.vespa@sierraclub.org

TAMARA ZAKIM  
WILLIAM ROSTOV  
Earthjustice  
50 California Street, Suite 500  
San Francisco, CA 94111  
Telephone: (415) 217-2000  
wrostov@earthjustice.org  
tzakim@earthjustice.org

SHANA LAZEROW  
Communities for a Better Environment  
1904 Franklin Street, Suite 600  
Oakland, CA 94612  
Telephone: (510) 302-0430  
slazerow@cbeocal.org

*Attorney for California Environmental  
Justice Alliance*

*Attorneys for Sierra Club*

Dated December 10, 2014

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	ARGUMENT .....	4
	A.    Approval of SDG&E’s Application to Meet All 600 MW of the Any Resource Authorization Through a Bilateral Contract with a Fossil Fuel Facility Violates Multiple Requirements in the Track 4 Decision. ....	4
	1.    The Application conflicts with the Decision’s requirement that an all-source Request for Offers meet some or all authorized capacity. ....	4
	2.    The Application violates the Loading Order and related Decision requirements by precluding competition and prioritization of preferred resources over fossil fuels in the 300-600 MW any resource authorization. ....	6
	3.    Provisions in the Track 4 Decision allowing for bilateral procurement of conventional generation cannot legitimately be interpreted to apply to the entirety of the 600 MW any resource authorization. ....	7
	B.    SDG&E’s Assertion that Carlsbad is Needed by 2018 is Inconsistent with the Findings of the Track 4 Decision. ....	7
	C.    If Necessary, Encina Can Be Briefly Extended Until Completion of an All-Source Solicitation Consistent with the Loading Order. ....	10
	D.    The PPTA Is Not Just and Reasonable. ....	11
	1.    The terms of the PPTA cannot be deemed reasonable absent a market test to allow meaningful comparison with other potential resources. ....	11
	2.    Additional project benefits asserted in the Application are largely specious and misleading. ....	13
	E.    PPTA Approval Must Await Completion of Environmental Review at the California Energy Commission. ....	15
III.	CONCLUSION .....	16

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b><u>CPUC Decisions</u></b>	
D.12-01-033 .....	6
D.13-03-029 .....	2, 8
D.14-02-016 .....	2
D.14-02-024 .....	7
D.14-03-004 .....	<i>passim</i>
<b><u>Cases</u></b>	
<i>Citizens' Taskforce on Sohio v. Board of Harbor Commissioners</i> (1979) 23 Cal.3d 812 .....	15
<b><u>Other Authorities</u></b>	
Cal. Pub. Res. Code § 21065 .....	15
Cal. Pub. Res. Code § 21069 .....	15
14 Cal. Code Regs. § 15096.....	15, 16
14 Cal. Code Regs. § 15126.6(a) .....	16
14 Cal. Code Regs. § 15378.....	15

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Application of San Diego Gas & Electric Company  
(U 902 E) for Authority to Partially Fill the Local  
Capacity Requirement Need Identified in D.14-03-  
004 and Enter into a Purchase Power Tolling  
Agreement with Carlsbad Energy Center, LLC.

Application 14-07-009  
(Filed July 21, 2014)

**OPENING BRIEF OF SIERRA CLUB AND  
CALIFORNIA ENVIRONMENTAL JUSTICE ALLIANCE**

Sierra Club and the California Environmental Justice Alliance (“CEJA”) respectfully submit this Opening Brief. This Opening Brief is timely submitted pursuant to the schedule set forth in the September 12, 2014 Assigned Commissioner’s Scoping Memo and Ruling.

**I. INTRODUCTION**

In Decision 14-03-004 (“Track 4 Decision” or “D.14-03-004”), the Commission identified and set the parameters for procurement need due to the permanent retirement of the San Onofre Nuclear Generating Station (“San Onofre”), a significant source of carbon-free generation in Southern California. The Track 4 Decision reflected a careful balance between the Commission’s responsibility to “ensure safety and reliability in the electric system” and its “statutory duty to ensure that customers receive reasonable services at just and reasonable rates, and to protect the environment.”<sup>1</sup> To that end, the Track 4 Decision allowed San Diego Gas & Electric (“SDG&E”) to bilaterally procure fossil fuels but also required “an all-source Request for Offers (“RFO”) for some or all capacity” and “strict compliance” with the Loading Order through competition and prioritization of preferred resources procurement over fossil fuels.<sup>2</sup>

SDG&E’s Application for approval of a bilaterally negotiated contract for the proposed Carlsbad Energy Center (“Carlsbad”), a 600 MW fossil-fuel facility, utterly fails to meet and balance the multiple requirements in the Track 4 Decision. The Track 4 Decision authorizes

---

<sup>1</sup> D.14-03-004, Decision Authorizing Long-Term Procurement for Local Capacity Requirements Due to Permanent Retirement of the San Onofre Nuclear Generating Station (Mar. 14, 2014), pp. 12-13, available at <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M089/K008/89008104.PDF>.

<sup>2</sup> *Id.*, p. 144 (Ordering Paragraph 6), p. 15.

SDG&E to procure between 500 and 800 MW of resources, 200 MW of which are limited to energy storage and preferred resources (energy efficiency, demand response and renewables), with the remaining 300 to 600 MW available to any resource.<sup>3</sup> Were the Application approved, it would fill the maximum allowable any resource need and, as SDG&E admits, “there will be no opportunity for preferred resources[,] energy storage or other conventional generation to compete for any of SDG&E’s any resource authorization.”<sup>4</sup> The Application is therefore inconsistent with the competitive all-source RFO process the Track 4 Decision mandated for “some or all” of the any resource authorization. In direct contravention of the Loading Order, Application approval would also foreclose the possibility of environmentally superior outcomes by denying preferred resources and energy storage the opportunity to compete with and displace fossil fuels in the any resource procurement authorization.

SDG&E’s effort to justify immediate bilateral procurement of the entirety of the any resource authorization on the grounds that an all-source RFO would not result in timely resource deployment is without merit. First, nothing in the Track 4 Decision permits SDG&E to disregard the Decision’s all-source RFO and Loading Order requirements. Second, SDG&E’s assertion that “600 megawatts of fossil fuel capacity is needed by 2018 because of the closure of Encina”<sup>5</sup> grossly mischaracterizes the need determination in the Track 4 Decision. While the Track 4 Decision notes in passing that some undetermined need “may” emerge as early as 2018, the Decision determined only “a reasonable and prudent LCR need for the SONGS service area by 2022.”<sup>6</sup> The Track 4 Decision neither identifies numerical need by 2018 nor references Encina’s closure as triggering need. To the contrary, replacement capacity for Encina, a once-through-cooling (“OTC”) facility currently scheduled to retire at the end of 2017 under State Water Board regulations, was already addressed in separate Commission proceedings that ultimately resulted in approval of the Pio Pico gas plant.<sup>7</sup> Indeed, SDG&E’s newfound claims of the urgent need for bilateral procurement of 600 MW of fossil fuels directly contradict its Track 4 testimony, which sought authorization to only replace San Onofre with 500 to 550 MW of

---

<sup>3</sup> *Id.*, pp. 4, 142-43.

<sup>4</sup> Application 14-07-009, Evidentiary Hearing, Reporter’s Transcript (“Tr.”) 17:12-18 (D. Baerman, SDG&E).

<sup>5</sup> Tr. 21:24-28 (D. Baerman, SDG&E).

<sup>6</sup> D.14-03-004, pp. 113, 27.

<sup>7</sup> D.13-03-029; D.14-02-016.

capacity by 2022 through an all-source RFO.<sup>8</sup>

Moreover, the need identified in the Track 4 Decision arises only in the event of the failure of the two largest transmission lines in the San Diego area (an N-1-1 contingency).<sup>9</sup> To the extent the Commission is concerned with the possibility of some resource need in 2018 should this extremely unlikely scenario occur, any number of solutions are available that do not require violating the Loading Order and eliminating competitive solicitation for some or all of the any resource authorization. These include: (1) accounting for the 400 to 840 MW of reduction in local capacity need from the Imperial Valley Flow Controller, a recently approved upgrade to existing transmission infrastructure with an expected in-service date of May 2017; (2) prioritizing procurement of preferred resources and energy storage with a 2018 in-service date; (3) procuring a smaller facility, as suggested by the Independent Evaluator, in an initial phase to enable competition and application of the Loading Order for a significant portion of the any resource authorization; and (4) if necessary, establishing a brief and feasible delay in the scheduled retirement of Encina.

SDG&E's rushed insistence on bilateral procurement for all 600 MW of the any resource authorization not only violates the requirements of the Track 4 Decision, but has significant consequences for ratepayers, the environment, and California's success in achieving a clean energy future. Bilateral procurement is a private negotiation that prejudices other potential resource providers who are kept from competing to fill authorized procurement amounts and frustrates optimal outcomes for ratepayers and the environment by excluding competition from potentially less costly and less polluting resources. While SDG&E claims the Carlsbad contract is competitively priced because it is comparable to the approved Pio Pico PPTA, Pio Pico originated from an RFO in 2009 that was limited to conventional generation and demand response.<sup>10</sup> Since then, preferred resources and energy storage have become increasingly viable and cost-effective. For example, Southern California Edison's ("SCE") recently completed all-source RFO received 1,800 bids, with the shortlist including over 260 MW of energy storage, a non-polluting resource that provides "superior flexibility, responsiveness and operational

---

<sup>8</sup> Exh. 18, pp. 1, 12 (SDG&E Prepared Track 4 Direct Testimony of R. Anderson).

<sup>9</sup> D.14-03-004, p. 37.

<sup>10</sup> Tr. 19:23-20:1; 114:3-6 (D. Baerman, SDG&E).

availability” compared to Carlsbad’s proposed LMS 100 peaker units.<sup>11</sup>

Like SCE, SDG&E could have met need through an all-source RFO or, at a minimum, sought to bilaterally procure less than the totality of its any resource authorization to retain space for a competitive process. Yet SDG&E did not even bother to request pricing for a smaller, phased-in project.<sup>12</sup> Instead, SDG&E chose to overreach, shutting out all competition and any meaningful ability to compare the project with potential alternatives. SDG&E’s proposed bilateral procurement of Carlsbad is a slap in the face to the many resource providers ready and eager for the opportunity to fully compete in an all-source solicitation, to SDG&E’s ratepayers saddled with a sweetheart deal, and to state clean energy and climate objectives compromised by a long-term commitment to new fossil fuel generation in lieu of carbon-free alternatives.

## II. ARGUMENT

### A. Approval of SDG&E’s Application to Meet All 600 MW of the Any Resource Authorization Through a Bilateral Contract with a Fossil Fuel Facility Violates Multiple Requirements in the Track 4 Decision.

By seeking expedited approval of the entire 600 MW any resource authorization prior to completion of an all-source RFO, the Application violates numerous provisions of the Track 4 Decision. The Decision requires “some or all” of SDG&E’s any resource authorization be subject to an all-source RFO, Loading Order compliance, and technological neutrality in resource solicitation.<sup>13</sup> Approval will foreclose these requirements. Accordingly, the Application must be rejected as inconsistent with the Track 4 Decision.

#### 1. *The Application conflicts with the Decision’s requirement that an all-source Request for Offers meet some or all authorized capacity.*

To meet its authorized capacity need, Ordering Paragraph 6 of the Track 4 Decision requires that SDG&E “shall issue an all-source Request for Offers for some or all capacity.”<sup>14</sup> As the Decision recognizes, an RFO “is an effective method” to ensure “that all resources that can meet the specified requirements should be able to compete on a fair basis.”<sup>15</sup> In an effort to circumvent a meaningful RFO, SDG&E has turned its procurement process into an illusory

---

<sup>11</sup> Tr. 18:17-24; 19:11-15 (D. Baerman, SDG&E); Exh. 14, pp. 12-13 (Protect Our Communities Prepared Rebuttal Testimony of B. Powers).

<sup>12</sup> Tr. 34:14-17 (D. Baerman, SDG&E).

<sup>13</sup> D.14-03-004, pp. 144-46 (Ordering Paragraphs 6-8).

<sup>14</sup> D.14-03-004, p. 144 (Ordering Paragraph 6) (emphasis added).

<sup>15</sup> D.14-03-004, p. 112.

exercise. Six weeks after filing the Carlsbad Application, SDG&E issued an all-source RFO in September 2014 seeking offers from a range of resources, including energy efficiency, demand response, renewables, energy storage and conventional (gas) generation.<sup>16</sup> Under SDG&E's proposed timeline, bids would be due by January 5, 2015, with a shortlist generated in June 2015 and an application for Commission approval of selected projects submitted in early 2016.<sup>17</sup> While the all-source RFO is ostensibly to solicit bids to meet the entirety of its 800 MW authorized need, were the Commission to approve the 600 MW bilateral contract with Carlsbad, the RFO could only be utilized to meet the 200 MW of need reserved exclusively for preferred resource and energy storage.<sup>18</sup>

Timing review and completion of the all-source RFO until after approval of bilateral procurement to fill SDG&E's entire any resource authorization runs afoul of D.14-03-004's all-source RFO requirement and common sense. An RFO limited to filling need with preferred resources and energy storage is not the "all-source" RFO required under the Track 4 Decision. Consistent with the plain meaning of "all," the all-source RFO applies to procurement of the 300 to 600 MW any resource authorization, which, unlike the preferred resource and energy storage procurement requirements, can be met with the full range of potential resources. Indeed, the Decision uses "any resource" and "all-source" interchangeably, and to delineate from the Decision's separate preferred resource-specific requirements.<sup>19</sup> Whether an RFO is actually all-source or not is determined by the need the RFO would fill, not by the resources initially solicited. As SDG&E admits, "[i]f this application were approved, there will be no opportunity for preferred resources[,] energy storage or other conventional generation to compete for any of SDG&E's any resource authorization."<sup>20</sup> Commission approval of SDG&E's Application at this juncture would therefore violate the Decision's requirement for all-source procurement of at least some of the any resource authorization.

---

<sup>16</sup> Exh. 17, p. 1 (SDG&E 2014 All Source RFO, <http://www.sdge.com/all-source-2014-rfo>).

<sup>17</sup> *Id.*, pp. 5-6.

<sup>18</sup> *Id.*, p. 2.

<sup>19</sup> *See, e.g.*, D.14-03-004, p. 100 ("[b]oth utilities may also procure energy storage as part of their preferred resources requirements *or* all-source authorizations.") (emphasis added).

<sup>20</sup> Tr. 17:12-18 (D. Baerman, SDG&E).



2. *The Application violates the Loading Order and related Decision requirements by precluding competition and prioritization of preferred resources over fossil fuels in the 300-600 MW any resource authorization.*

Meeting the entirety of the any resource authorization with bilateral procurement of a fossil fuel facility prior to completion of the RFO process also contravenes the Loading Order and Decision provisions designed to ensure Loading Order compliance in applications to meet any resource need. In the Track 4 Decision, the Commission reiterated its commitment to the Loading Order, which requires utilities to “invest first in energy efficiency and demand-side resources, followed by renewable resources, and only then in clean conventional electricity supply.”<sup>21</sup> The Decision specifically held that the “loading order applies to all utility procurement, even if pre-set targets for certain preferred resources have been achieved.”<sup>22</sup> It is clear SDG&E cannot comply with the Loading Order merely by meeting the Decision’s 200 MW preferred resource and energy storage-specific authorization. Instead, “[o]nce procurement targets are achieved for preferred resources . . . . the IOUs are required to continue to procure the preferred resources ‘to the extent they are feasibly available and cost effective.’”<sup>23</sup> SDG&E’s Application violates this requirement by foreclosing continued procurement of preferred resources to meet any resource need.

D.14-03-004 not only reaffirms the applicability of the Loading Order to any resource procurement, but also embeds Loading Order compliance requirements in utility procurement applications. For example, Ordering Paragraph 8 requires that SDG&E’s procurement application meet criteria that include:

A demonstration of technological neutrality, so that no resource was arbitrarily or unfairly prevented from bidding in SCE’s or SDG&E’s solicitation process. To the extent that the availability, viability and effectiveness of resources higher in the Loading Order are comparable to fossil-fueled resources, SCE and SDG&E shall show that it has contracted with these preferred resources first.<sup>24</sup>

SDG&E’s Application does not meet this requirement. Far from a “demonstration of technological neutrality,” SDG&E has handpicked one technology to meet all of its any resource

---

<sup>21</sup> D.12-01-033, p. 17 (citing the Energy Action Plan 2008 Update at p. 1).

<sup>22</sup> *Id.*, p. 20.

<sup>23</sup> D.14-03-004, pp. 14-15 (quoting D.12-01-033 at 21).

<sup>24</sup> *Id.*, p. 145 (Ordering Paragraph 8).

authorization through a bilateral agreement that prevents bidding and comparison from all other resources. The exact outcome prohibited by Ordering Paragraph 8 – arbitrarily or unfairly preventing resources from bidding in – is the result here.

3. *Provisions in the Track 4 Decision allowing for bilateral procurement of conventional generation cannot legitimately be interpreted to apply to the entirety of the 600 MW any resource authorization.*

While the Decision allows SDG&E to file a separate, earlier application for bilateral procurement of gas-fired generation, by seeking to meet *all* of the any resource need through bilateral gas-fired generation, the Application conflicts with the Decision’s concurrent requirements for an all-source RFO and “strict compliance” with the Loading Order.<sup>25</sup> As suggested by the Independent Evaluator, SDG&E could have sought to bilaterally procure a smaller facility in an initial phase.<sup>26</sup> Per the Decision’s mandates, this would allow an all-source RFO for at least “some” of the any resource need and enable preferred resources and energy storage to compete against fossil fuels consistent with the Loading Order. Instead, SDG&E completely disregarded these concurrent requirements. As the Commission recently recognized, “[i]t is a settled rule of legal interpretation to avoid rendering particular terms as meaningless or mere surplusage.”<sup>27</sup> SDG&E’s belief that immediate bilateral procurement of the entire 600 MW any resource authorization is consistent with the Track 4 Decision must be rejected because it improperly renders the Decision’s all-source and Loading Order requirements meaningless.

**B. SDG&E’s Assertion that Carlsbad is Needed by 2018 is Inconsistent with the Findings of the Track 4 Decision.**

SDG&E’s attempt to justify bilateral procurement of the entire any resource authorization on the grounds that “all 600 megawatts of fossil fuel capacity is needed by 2018 because of the retirement of Encina”<sup>28</sup> does not withstand scrutiny. D.14-03-004 authorized SDG&E “to procure between 500 and 800 MW by 2022.”<sup>29</sup> Consistent with this determination and with Track 4 testimony submitted by SDG&E and CAISO, the Decision’s repeated focus is on

---

<sup>25</sup> See D.14-03-004, p. 134 (Finding of Fact #90) (“SDG&E can potentially procure the required amount of preferred and other resources needed to meet the LCR need in its portion of the SONGS service area though an all-source RFO *and* bilateral contracts.”) (emphasis added).

<sup>26</sup> Exhibit 1A (Un-redacted excerpt of Independent Evaluator Report).

<sup>27</sup> D. 14-12-024, p. 55 (citing *City of San Jose v. Superior Court* (1993) 5 Cal.4th 47, 55).

<sup>28</sup> Tr. 21:24-28 (D. Baerman, SDG&E).

<sup>29</sup> D.14-03-004, p. 2 (emphasis added).

determining procurement needs for 2022.<sup>30</sup> The Decision nowhere identifies a numeric need for 2018 and nowhere references Encina. The Decision’s omission of the purported reliability impacts from the planned retirement of Encina is not an oversight. Replacement capacity for Encina was already addressed in a separate Commission proceeding that ultimately resulted in procurement of the Pio Pico Energy Center<sup>31</sup> and Encina’s retirement was accounted for and assumed in determining need in D.14-03-004.

SDG&E’s claims regarding the need for 600 MW of bilateral fossil fuel procurement by 2018 are also inconsistent with its own prior testimony leading up to D.14-03-004. In testimony on need resulting from the retirement of San Onofre, SDG&E identified only 500 to 550 MW of need for 2022, to be met through an RFO “open to all supply side technologies.”<sup>32</sup> SDG&E’s testimony assumed Encina’s retirement,<sup>33</sup> yet determined no specific procurement need was triggered upon the facility’s closure. Accordingly, SDG&E’s belief that “[t]he Commission has determined in the Track 4 Decision that ... the timing of [] procurement must take into account” the retirement of Encina is without merit. No such determination is in D.14-03-004, much less in SDG&E’s own Track 4 need analysis. SDG&E manufactured this supposed need after the fact solely to justify its decision to seek a bilateral contract with Carlsbad.

For the same reasons, CAISO’s claim that “600 MW of new resource capacity is needed before summer 2018 along with the transmission projects in Table 1 to ensure LCR needs are met” is also inconsistent with the Track 4 Decision and its own prior analysis.<sup>34</sup> CAISO first asserted in its opening Track 4 Testimony that it was premature to authorize any need and, in rebuttal, only supported SDG&E’s request for 500 to 550 MW of all-source procurement by 2022.<sup>35</sup> Moreover, because the Decision was approved prior to finalization of the CAISO’s 2013-2014 Transmission Planning Process (“2013-2014 TPP”), potential benefits of the

---

<sup>30</sup> See, e.g., D.14-03-004, p. 27 (“[t]he first task at hand in Track 4 is to determine a reasonable and prudent LCR need amount for the SONGS service area by 2022.”); p. 116 (“we do not authorize procurement of all resources identified by the ISO as needed to meet LCR needs in the SONGS service area by 2022.”).

<sup>31</sup> See D.13-03-029 (determining 298 MW of local capacity need in San Diego local capacity area in 2018 upon retirement of Encina); D.14-02-016 (approving amended PPTA for Pio Pico Energy Center to meet need authorized in D.13-03-029).

<sup>32</sup> Exh. 17, p. 12 (SDG&E Prepared Track 4 Direct Testimony of R. Anderson).

<sup>33</sup> *Id.*, p. 9, Table 2.

<sup>34</sup> Exh. 4, p. 6:27-28 (CAISO Prepared Opening Testimony of R. Sparks).

<sup>35</sup> Exh. 31, p. 29:28-30:13 (CAISO Prepared Track 4 Testimony of R. Sparks); D.14-03-004, p. 81 (“ISO now recommends approval of the recommendations of SCE and SDG&E.”)

transmission improvements in lowering local capacity needs were largely unincorporated into the Decision's need determination. CAISO's position that transmission projects that were never accounted for in determining SDG&E's need authorization are needed along with 600 MW of additional new capacity by 2018 is thus completely at odds with the Track 4 Decision.<sup>36</sup>

As the Track 4 Decision recognizes, "[i]f some level of new transmission resources is identified in the 2013/2014 TPP which would reduce LCR needs in the SONGS service area by 2022 (for example, the Mesa Loop-In project), the total amount of overall procurement needed in the SONGS service area would be reduced."<sup>37</sup> Transmission projects approved after the Track 4 Decision, which CAISO identifies in its testimony as Table 1, include:

- An additional 450 MVAR of dynamic reactive support at San Luis Rey, with a proposed in-service date of June 2018, and is expected to reduce LCR need from between 100 and 200 MW;
- The Imperial Valley Flow Controller, which has a proposed in-service date of May 2017, and is expected to reduce LCR need between 400 and 840 MW; and
- The Mesa Loop-In Project, which has a proposed in-service date of December 2020, and is expected to reduce LCR need by 300 to 640 MW.<sup>38</sup>

The first two projects listed, the dynamic reactive support and the Imperial Valley Flow Controller, were not considered at all in the Track 4 Decision and the benefits of the Mesa Loop-In were significantly discounted.<sup>39</sup> The "best information" available indicates that these transmission projects will collectively lower LCR need between 800 to 1680 MW.<sup>40</sup> Because the Commission anticipated that these projects would be approved in CAISO's 2013-2014 TPP, the Track 4 Decision expects "some combination of the following would occur: a) procurement at or near the minimum levels authorized in this decision; b) less procurement or no procurement authorized in future LTPP proceedings; and c) less of a need to delay retirements of OTC

---

<sup>36</sup> Indeed, while CAISO asserted need in 2018, CAISO's witness Mr. Sparks was unfamiliar with basic requirements of the Track 4 Decision. *See* Tr. 278:1:16 (CAISO witness incorrectly stating he believed Track 4 Decision identified 600 MW of need in 2018); 284:24-285:18 (witness unable to state whether Track 4 Decision identified numerical need for 2018 despite asserting 2018 need in testimony); Tr. 287:6-7 (witness stating "I didn't really need to read much of [the Track 4 Decision]").

<sup>37</sup> D.14-03-004, p. 116.

<sup>38</sup> Exh 4, p. 5; *see also* Exh. 32, p.108 (CAISO 2013-14 TPP) (providing LCR reduction amounts).

<sup>39</sup> *See* D.14-03-004, pp.115-116 (the "authorization approved today does not assume any specific transmission upgrades or new projects which might be determined in the 2013/2014 TPP.")

<sup>40</sup> Tr. 308:18-21 (R. Sparks, CAISO); Exh. 32, p. 108 (CAISO 2013-14 TPP).

plants.”<sup>41</sup> The approval of these projects in the TPP was expected by the Commission, on the basis of Track 4 testimony, to reasonably lower overall need.

Notably, the Imperial Valley Flow Controller has a proposed in-service date of May 2017 and is estimated to reduce local resource need by 400 to 840 MW.<sup>42</sup> As noted by CAISO, this project was chosen for approval because it provides “material reductions in local capacity requirements without the addition of new rights of way” and therefore has a high likelihood of timely implementation due to minimized “risk about permitting and timing of permitting.”<sup>43</sup> The significant local capacity reductions resulting from this transmission project can address need that may emerge in 2018 in lieu of rushed bilateral procurement of the entirety of the any resource authorization, which will both foreclose competition and consideration of sustainable long-term alternatives that better meet California’s renewable energy goals.

**C. If Necessary, Encina Can Be Briefly Extended Until Completion of an All-Source Solicitation Consistent with the Loading Order.**

Operation of the Encina Power Station, which sits on land adjacent to the current proposed site for the Carlsbad Energy Center, may be extended beyond the facility’s current 2017 retirement date by the State Water Resources Control Board, if necessary, pursuant to CAISO recommendation.<sup>44</sup> Units 4 and 5, the youngest of four units at Encina, provide the combined capacity of 600 MW.<sup>45</sup> This capacity is sufficient to meet any potential need SDG&E claims it must fill by 2018 while the utility’s all-source RFO is completed, should such need arise.<sup>46</sup>

Assertions by Carlsbad Energy Center that the Encina units have reached the end of their useful life are unsubstantiated. In fact, when Cabrillo Power prepared an early iteration of its Encina OTC implementation plan, Carlsbad Energy proposed keeping Units 4 and 5 online beyond 2017.<sup>47</sup> In responses to a Sierra Club data request, Mr. Piantka’s unsupported statement

---

<sup>41</sup> D.14-03-004, pp. 116-17.

<sup>42</sup> Exh. 32, p. 108 (CAISO 2013-14 TPP).

<sup>43</sup> Exh. 4, pp. 4:28-5:2 (CAISO Prepared Direct Testimony of R. Sparks).

<sup>44</sup> Tr. 292:15-24 (Sparks, CAISO); Tr. 164:23-165:8 (G. Piantka, Carlsbad Energy Center)

(acknowledging that State Water Resources Control Board has authority to make a determination to suspect an existing power plant’s final compliance with the OTC policy, if necessary).

<sup>45</sup> Tr. 166:21-25 (G. Piantka, Carlsbad Energy Center).

<sup>46</sup> *Id.*

<sup>47</sup> Exh. 3, p. 5 (Carlsbad Energy Center Prepared Direct Testimony of G. Piantka); *see also* Tr. 172:23 –

in direct testimony that the units had reached the end of their useful life was explained as “based ... on the age of and inefficiencies associated with the Encina Power Station units.”<sup>48</sup> This direct testimony is not credible, however. In cross-examination, Mr. Piantka testified that, in fact, a unit’s age is *not* enough to determine the end of a unit’s useful life.<sup>49</sup> Indeed, other power plants with OTC units – like Mandalay – are operating with units over 20 years older than Encina units 4 and 5 and are not set to retire until 2020.<sup>50</sup> Moreover, Mr. Piantka has not testified to any demonstrable operational issues – including inefficiencies – in Units 4 and 5 that suggest these units are near the end of their useful life, even when directly asked.<sup>51</sup> Instead, the only justification provided for terminating the operation of the Encina units is the 2017 OTC compliance retirement date itself.<sup>52</sup> Thus, in the unlikely event generation may be needed in the period during which SDG&E completes its all-source RFO, a brief extension of the operating life of Encina Units 4 and 5 is a reasonable stop-gap measure to ensure that all Track 4 requirements are met, and that fossil fuel generation is not committed to prematurely and unnecessarily at the expense of fair competition and Loading Order preferred resource priorities.

**D. The PPTA Is Not Just and Reasonable.**

1. *The terms of the PPTA cannot be deemed reasonable absent a market test to allow meaningful comparison with other potential resources.*

Because SDG&E seeks approval of a bilateral contract for the entire any resource authorization prior to the results of an all-source RFO, the Application precludes competition and any ability to compare project costs with those of potential alternatives. As recognized in the final report of the Independent Evaluator (“IE Report”):

The IE has raised some concerns about the Carlsbad decision since the decision has not been guided by any market test or evaluation results prior to negotiating the Carlsbad contract. The IE originally raised a concept with SDG&E to issue a Solicitation of Interest as a market test. However, based on its LTPP/Track 4 Procurement Plan for Preferred Resources filing, SDG&E now plans to issue a

---

173:28 (G. Piantka, Carlsbad Energy Center).

<sup>48</sup> Exh. 22, p. 3 (Carlsbad Responses to Sierra Club Data Requests).

<sup>49</sup> Tr. 167:4-7 (G. Piantka, Carlsbad Energy Center).

<sup>50</sup> Tr. 167:16 – 168:25 (G. Piantka, Carlsbad Energy Center).

<sup>51</sup> Exh. 3, p. 8 (Carlsbad Energy Center Prepared Direct Testimony of G. Piantka); *see also* Tr. 175:10-176:6 (G. Piantka, Carlsbad Energy Center).

<sup>52</sup> *See, e.g.*, Tr. 184:22-185:2 (G. Piantka, Carlsbad Energy Center).

Preferred Resources RFO in the third quarter for up to 200 MW to be delivered by 2021. The plan states that SDG&E will submit a short list for approval by first quarter 2015.

One option posed by the IE was for SDG&E to contract for 400 MW from the Carlsbad facility with an option to take the next 200 MW if the results of the Preferred Resources RFO are not compelling or economic. Alternatively, perhaps Carlsbad could phase in the units (as it anticipates already) but over a longer period to allow sufficient time to assess the market.<sup>53</sup>

Rather than conduct a market test to ensure the reasonableness of the PPTA, SDG&E bases its assertion that the PPTA is competitively priced on the grounds that it “compares favorably to SDG&E’s most recently approved conventional PPTA with the Pio Pico Energy Center.”<sup>54</sup> The Application’s reliance solely on the Pio Pico PPTA to demonstrate reasonableness is unpersuasive. The terms of the Pio Pico PPTA originated from a fossil-fuel centric 2009 RFO limited to conventional generation and demand response.<sup>55</sup> Accordingly, no legitimate conclusions can be drawn from the Pio Pico PPTA with regard to its current competitiveness. Not only have preferred resources and energy storage have become increasingly viable and cost-effective since the Pio Pico RFO was issued, but even the developer of Pio Pico has testified it can provide additional conventional capacity at lower cost than Carlsbad.<sup>56</sup>

A market test to ascertain the competitiveness of the Carlsbad PPTA is also critical given the extraordinary interest resource providers have demonstrated in seeking to meet local capacity need. Even with the presumably chilling effect of SDG&E’s proposed bilateral procurement on resource provider interest in its all-source RFO, SDG&E still reports “heavy” attendance at its bidder conferences and acknowledges it expects a “robust” RFO response.<sup>57</sup> SCE’s recently completed all-source RFO, for example, received approximately 1,800 bids.<sup>58</sup> This high level of market interest makes it unreasonable to conclude the Carlsbad PPTA is competitively priced based solely on a cost comparison with a single project.

---

<sup>53</sup> Exh. 1, p. 37 (Appendix D).

<sup>54</sup> Application of SDG&E for Authority to Partially Fill the LCR Need Identified in D.14-03-004 (July 21, 2014) (“Application”) at 6.

<sup>55</sup> Tr. 19:23-25; 114:3-6 (D. Baerman, SDG&E).

<sup>56</sup> Exh. 7, p. 4:2-9 (Pio Pico Prepared Opening Testimony of K. Derman).

<sup>57</sup> Tr. 18:2 (D. Baerman, SDG&E).

<sup>58</sup> Tr. 18:20-24 (D. Baerman, SDG&E).

In addition to failing to conduct a market test, SDG&E also failed to make any effort to meaningfully assess a phased-in project, which would enable a market test and competition for at least some portion of the any resource authorization. While SDG&E asserts it rejected phasing because it “was expected to be significantly more expensive,” SDG&E provides no data to support this claim. SDG&E “did not receive or request any phased-in pricing from NRG”<sup>59</sup> and did not know whether construction of a 400 MW facility would be similar on a levelized cost-basis to the proposed 600 MW facility.<sup>60</sup> While SDG&E asserts that it is reasonable to believe a second 200 MW phase “would be more expensive,” this unsupported claim is belied by Pio Pico testimony stating that it can offer additional phased-in capacity at lesser cost than provided in its original PPTA by taking “advantage of the economies of the current plant design and location.”<sup>61</sup> Absent a market test or provision of data on phased-in pricing, SDG&E’s assertion that the Carlsbad PPTA is competitively priced is simply not credible.

2. *Additional project benefits asserted in the Application are largely specious and misleading.*

In its Application, SDG&E claims a number of purported project benefits that do not withstand scrutiny.<sup>62</sup> For example, the Application asserts that Carlsbad “Facilitates Timely Retirement of San Diego’s Last OTC Units.”<sup>63</sup> Yet, as set forth above, Pio Pico was approved in a separate proceeding to replace Encina and the Track 4 Decision nowhere states that authorized need is required or intended to facilitate timely OTC retirement. To the extent timely OTC retirements are discussed, it is only in the context of benefits of transmission upgrades such as the Mesa Loop-In and the Imperial Valley Flow Controller.<sup>64</sup>

The Application’s claim that Carlsbad “Replaces Older, Less-Efficient Encina Generation Facilities” is equally misplaced.<sup>65</sup> Carlsbad would meet replacement need authorized from the retirement of San Onofre, a carbon-free resource. By replacing a carbon-free resource with carbon-intensive generation, Carlsbad would significantly increase California’s carbon

---

<sup>59</sup> Exh 1A; Tr. 34:14-17 (D. Baerman, SDG&E).

<sup>60</sup> Tr. 22:28-29:3 (D. Baerman, SDG&E).

<sup>61</sup> Exh. 7, p. 4:2-4 (Pio Pico Prepared Opening Testimony of K. Derman).

<sup>62</sup> Application at 6.

<sup>63</sup> *Id.*

<sup>64</sup> D. 14-03-004, p. 116-17.

<sup>65</sup> Application at 6.



commitment when state policy calls for rapid and accelerated decarbonization.<sup>66</sup> By not even giving preferred resources and energy storage an opportunity to compete for some or all of the any resource need, the project maximizes the environmental harm resulting from San Onofre replacement.

The Application's assertion that Carlsbad "Facilitates the Integration of Intermittent Renewable Resources" is also flawed for two reasons.<sup>67</sup> First, because substantial flexibility already exists on the system and the Commission has not identified the need for additional flexible resources, the Project's flexible attributes do not provide added system benefit.<sup>68</sup> Second, to the extent renewable integration needs increase if and when the RPS moves beyond 33 percent, energy storage is a much higher value and more useful resource. As CAISO stated in testimony, "a peaker has the ability to be shut off so it is not producing, but it does not have the ability to charge or pump."<sup>69</sup> In contrast, unlike a peaker plant such as Carlsbad, storage has charging capability and can address emerging system issues from increased renewables such as overgeneration. Moreover, storage also provides greater flexibility and operational availability. As stated in testimony by Bill Powers:

While Mr. Valentino states that Carlsbad can 'be at its full capacity in less than 10 minutes,' battery storage requires less than a second to ramp to full capacity. Mr. Valentino also states that Carlsbad 'will have a very flexible range between 25 MW (per unit) and 600 MW (in total)' (or 10 with six units, 150 – 600 MW total). In contrast, storage is flexible throughout its entire range, and has, by taking in energy and then discharging it, twice the ramping range as its nameplate capacity.<sup>70</sup>

In addition, air permit constraints limit the operational availability of Carlsbad to 2,700 hours, or

---

<sup>66</sup> Executive Order S-03-05 (setting target to reduce greenhouse gas pollution to 80 percent below 1990 levels by 2050); California Air Resources Board, *First Update to the Climate Change Scoping Plan*, available at [http://www.arb.ca.gov/cc/scopingplan/2013\\_update/first\\_update\\_climate\\_change\\_scoping\\_plan.pdf](http://www.arb.ca.gov/cc/scopingplan/2013_update/first_update_climate_change_scoping_plan.pdf), at 33 (achieving a low-carbon future "will require that the pace of GHG emission reductions in California accelerate significantly. Emissions from 2020 to 2050 will have to decline several times faster than the rate needed to reach the 2020 emissions limit.").

<sup>67</sup> Application at 6.

<sup>68</sup> See Exh. 14, pp. 11-12 (Protect Our Communities Prepared Rebuttal Testimony of B. Powers)

<sup>69</sup> Tr. 320:20-22 (R. Sparks, CAISO)

<sup>70</sup> Exh. 14, p. 13 (Protect Our Communities Prepared Rebuttal Testimony of B. Powers) (citations omitted).

30 percent of the year.<sup>71</sup> Battery energy storage does not have these operating limits and is designed to allow for approximately 95 percent utilization.<sup>72</sup>

With regard to the Application's assertion that the project is "Competitively Priced," as set forth above, this is impossible to accurately discern absent a current market test. For the same reason, it is equally impossible to determine whether the project is the best fit to meet identified need. However, the fact that over 260 MW of energy storage was shortlisted in SCE's all-source RFO and storage provides superior services than a peaker plant strongly suggests meeting the any resource authorization entirely with fossil fuels is not the best fit for identified need.

**E. PPTA Approval Must Await Completion of Environmental Review at the California Energy Commission.**

SDG&E's effort to rush Commission approval of Carlsbad violates the California Environmental Quality Act ("CEQA") because the project is still in the midst of environmental review at the California Energy Commission ("CEC"). CEQA prohibits a responsible agency from acting on a project until it has considered a project's environmental effects as described in the certified final EIR for the project.<sup>73</sup> Because the Commission is a responsible agency for Carlsbad, it may not approve the PPTA until completion of environmental review at the CEC.

First, the 600 MW Carlsbad plant is a "project" under CEQA. A "Project" is any activity that has the potential to cause a direct or reasonably foreseeable indirect physical change in the environment, and includes activities involving the issuance of a lease, permit, license, or other entitlement for use by a public agency.<sup>74</sup> Agencies with discretionary approval over a project, but are not the "lead" agency, have duties as "responsible agencies."<sup>75</sup> Here, the Carlsbad plant has a strong likelihood of causing a physical change to the environment. No party disputes that the plant will emit criteria pollutants and GHGs. An entity is a "responsible" agency under

---

<sup>71</sup> Exh. 14, pp. 12-13 (Protect Our Communities Prepared Rebuttal Testimony of B. Powers) (citations omitted); Tr. 47:23-48:12 (D. Baerman, SDG&E).

<sup>72</sup> Exh. 14, pp. 10-11 (Protect Our Communities Prepared Rebuttal Testimony of B. Powers) (noting that "flexibility in the system exceeds flexibility need by approximately 3:1" and that there has been no determination of the need for additional flexible resources in the Long Term Procurement Planning proceeding).

<sup>73</sup> CEQA Guidelines, 14 Cal. Code Regs. § 15096(f).

<sup>74</sup> Pub. Res. Code § 21065; CEQA Guidelines, 14 Cal. Code Regs. § 15378(a).

<sup>75</sup> California Public Resources Code § 21069; CEQA Guidelines, 14 Cal. Code Regs. § 15096.

CEQA when it has approval authority over some or all of a project.<sup>76</sup> The Commission here is a responsible agency because the PPTA between SDG&E and Carlsbad is a key approval that will determine whether the 600 MW Carlsbad plant is constructed. Absent an approved PPTA, it is highly unlikely that plant would obtain sufficient financing and generate sufficient revenue to merit construction and operation.

Second, as a responsible agency, the Commission must await completion of CEQA review by the lead agency, which is the CEC.<sup>77</sup> This is critical to ensuring both that the Commission's approval accurately reflects the final project and that the CEC's environmental analysis is not prematurely limited to preclude meaningful compliance with CEQA's mandates. The CEC has exclusive authority to conduct CEQA review over new gas-fired power plants like the 600 MW Carlsbad facility. CEQA requires that the CEC's environmental review include an evaluation of feasible alternatives to avoid or reduce a project's potentially significant impacts.<sup>78</sup> Approval of the PPTA would lock in a 600 MW fossil fuel facility and foreclose evaluation of an alternative that meets need with a cleaner mix of resources. This outcome contravenes both the plain language and the intent of CEQA's alternatives analysis.

### III. CONCLUSION

For all the reasons above, Sierra Club and CEJA respectfully request that the Commission deny SDG&E's application for approval of the PPTA for the Carlsbad Energy Center.

//  
//  
//  
//  
//

---

<sup>76</sup> See California Public Resources Code § 21069; *Citizens' Taskforce on Sohio v. Board of Harbor Commissioners* (1979) 23 Cal.3d 812 (holding that Commission became a responsible agency when it shared approval duties over a crude pipeline project.)

<sup>77</sup> CEQA Guidelines § 15096(f). ("Prior to reaching a decision on the project, the responsible agency must consider the environmental effects of the project as shown in the EIR or negative declaration.")

<sup>78</sup> CEQA Guidelines, 14 Cal. Code Regs. § 15126.6(a).

Dated: December 10, 2014

Respectfully submitted,

/s/

---

Matthew Vespa  
Senior Attorney  
Sierra Club  
85 Second St., 2<sup>nd</sup> Floor  
San Francisco, CA 94105  
(415) 977-5753  
[matt.vespa@sierraclub.org](mailto:matt.vespa@sierraclub.org)

/s/

---

Tamara Zakim  
William Rostov  
Earthjustice  
50 California Street, Suite 500  
San Francisco, CA 94111  
Telephone: (415) 217-2000  
Email: [wrostov@earthjustice.org](mailto:wrostov@earthjustice.org)

Attorneys for Sierra Club

/s/

---

Shana Lazerow  
Communities for a Better Environment  
1904 Franklin Street, Suite 600  
Oakland, CA 94612  
Telephone: (510) 302-0430  
Facsimile: (510) 302-0437  
Email: [slazerow@cbecal.org](mailto:slazerow@cbecal.org)